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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 19, 2012

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner for Long-Range Planning
Seth Zeren, Chief Zoning Code Official

RE: #49-11 Ald. Johnson, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning and Development and Commissioner of Inspectional Services review with the Zoning and Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments.

MEETING DATE: October 22, 2012

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner of Inspectional Services

EXECUTIVE SUMMARY

In February 2011, the Board of Aldermen adopted new residential floor area ratio (FAR) regulations under Ordinance Z-77, which changed both the way gross floor area is calculated and the allowed FAR in each residential zone. FAR is the ratio of building area to lot area and is used to regulate the mass of structures. Ordinance Z-77 sought to change FAR to more accurately reflect existing conditions, to make FAR easier to apply and enforce, and result in new residential construction in keeping with its surroundings. The new regulations became effective on October 15th, 2011, and were preceded and followed by extensive education of the building professional community. When the new rules were adopted, the Committee requested that the Planning and Inspectional Services (ISD) Departments

monitor the effect of the new regulations on residential development in the City and compare the “old” and “new” FAR calculations of actual and proposed construction projects. ISD and the Planning Department last reported back to ZAP on March 12, 2012.

In preparing this report on one year after adoption of the new FAR regulations, staff analyzed building permit data and special permits for FAR reviewed over the past year and spoke with ISD staff and the members of the FAR Working Group, a group that was appointed to advise the Planning Department and the Board of Aldermen in developing the new FAR regulations. Staff found that building permit numbers and revenue have increased over the past year. Out of sixty special permit requests reviewed in the past year, only six required a special permit for residential FAR alone. ISD staff believes that the building community now better understands and is more comfortable with the new rules. Though the members of the FAR working group expressed some specific concerns that they wish to monitor, the group recommends no changes at this time.

The experiences and data collected by the Planning Department over the last year do not show a negative impact on overall development. The number of special permit requests has not significantly increased nor have there been significant changes to residential design. Staff believes that more information should be collected before the Committee considers adjustments to the current rules. The Planning Department recommends ongoing monitoring of residential development, feeding into a comprehensive look at every aspect of residential zoning as part of Zoning Reform Phase 2, beginning in 2013.

ANALYSIS

Planning staff assessed the effect of the new FAR regulations on residential development by analyzing ISD building permit data from the last several years and special permit requests for residential FAR waivers under the new rules. Staff also convened the former members of the FAR Working Group for an informal discussion to get input from practicing building professionals and the other members of the committee on how the rules are affecting design and development. The Planning Department looked at four major questions to judge the effectiveness of the new FAR regulations:

- Have the new regulations affected overall development in Newton and City finances?
- Does the FAR limit permit an appropriate amount of development in each zone?
- Has the new regulation led to an unreasonable burden of special permits, for property owners or for City staff?
- Has the new calculation of gross floor area affected the design of new homes?

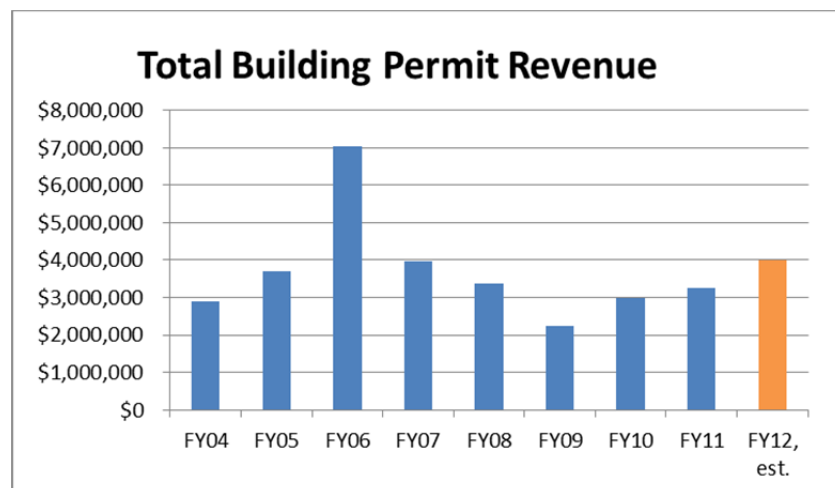
Overall impact on development

At previous working sessions, members of the Committee and the public asked whether the new regulations would cause a decrease in new residential development and that this decline would negatively affect the City’s finances. Staff examined this question by first comparing the number of

building permits issued for new homes and residential renovations¹ issued over the one year since the new FAR regulation went into effect (Oct. 15, 2011 to Oct. 15, 2012) and the previous year (Oct. 15, 2010 to Oct. 15, 2011).

Comparison of years before and after change	2010-2011	2011-2012
Total number of building permits	2,790	2,816
Total number of new home permits	73	82

The number of building permits issued for renovations and new construction has increased in the year since the new FAR regulations went into effect from the year prior. The recovering real estate market in the Boston area is likely the main driver of this trend. To understand the potential fiscal impacts of the new regulation, staff next looked at the total revenue from permit fees over the past eight years.²



The chart shows no particular positive or negative impact on City revenues from the new FAR regulations which were adopted in late 2011; rather the change in permit revenues is likely driven by fluctuations in the real estate market and overall economy. The former members of the FAR Working Group provided anecdotal evidence that the new FAR regulations have slowed or halted some residential renovations or home sales, but also believe that the main driver of changes in construction, renovation, and home values has been the market.

Amount of development permitted

The architects from the FAR Working Group expressed concern, however, that as the economy recovers demand for larger homes will increase and that if the FAR limits are too low, the regulation could negatively impact development and property values in Newton. This concern revolves around whether the limit number is correct, rather than the updated method of calculating gross floor area.

¹ Includes both major additions and smaller interior/exterior work that does not increase the gross floor area of the house; the City's permit records do not distinguish.

² The total revenue from FY12 has not been finalized so an estimated figure based on permit receipts over the past 12 calendar months has been used.

The architects and the other former members of the FAR Working Group were divided in their views and concerns about the effect of the new rules. The architects on the group generally felt that the new FAR limits were too low by .02 to .05, while the non-architect members of the group felt that the FAR limits were perhaps having the desired effect of making FAR one of the constraints on residential development and limiting the construction of over-sized houses. ISD staff have also expressed concern that the FAR numbers permitted are lower than those originally proposed by the working group and that those lower numbers have lowered development potential on some lots compared to that allowed under the previous temporary bonus. At this point, there is insufficient information to distinguish the effects of the FAR regulations from overall market trends. The FAR regulations were crafted to address a host of issues, including overbuilding on certain sites, equity in development opportunities, and the protection of neighborhood character. In balancing these goals, the amount of development to allow is a policy decision.

Special Permits for FAR

Staff next looked at those residential developments which have applied for special permits seeking relief from FAR regulations. Since October 15, 2011, a total of approximately 60 residential and commercial projects have submitted for zoning review in preparation for a special permit application. Of these, 14 applications concerned residential FAR waivers. Of these 14, eight required some kind of additional zoning relief, typically a special permit for the extension of a nonconforming structure, and the other six received special permits for FAR alone. The following table summarizes these findings and compares the number of special permits to the overall number of new homes permitted in the last year.

Comparison of special permits (SP) for FAR (Oct 15, 2011 to Oct 15, 2012)	Number	Percent of Total
Approx. number of special permits	60	-
Residential SP for FAR	14	23.3%
Residential SP for FAR only	6	10%
Permits for new home construction	82	-
New Residential SP for FAR	3	3.7%
New Residential SP for FAR only	2	2.4%

Attachment B includes detailed information about the fourteen projects that requested relief from residential FAR over the past year. Generally speaking, projects requesting a special permit for FAR fall into one or more of the following categories:

- Additions to existing nonconforming homes (on small lots or large existing homes, or both)
- Large additions (greater than 1,000 square feet) to existing, conforming homes
- Large new home (4,000 – 7,000 square feet) exceeding allowed FAR

The special permit provides the opportunity to review potential development to ensure that it does not detract from the neighborhood character and scale and limits direct impacts on abutters. The three categories above represent instances where new development may create potential impacts

(shading, blocked views, alterations of neighborhood character) that merit further review. Increasing the allowed FAR might eliminate some special permits that are very close to the limit, but with any threshold there will always be some projects just over the line. Given the approximately 25,000 single-family houses in Newton and the thousands of renovations and 82 new homes permitted last year, the overall impact of the new FAR rules on the special permit process has been fairly minimal.

The architects from the FAR Working Group noted, however, that uncertainty about the time, conditions, and likelihood of obtaining a special permit is a major difficulty in advising clients and is a barrier to some development. The Working Group agreed that further efforts should be made to reduce uncertainty in pursuing a FAR special permit, including providing more information about previously-approved projects and developing a clear body of precedent. The members expressed support for the changes that have been made in the land use process to streamline special permit review, but would like to see further efforts, including developing capacity on another review body that could take on some or all special permits for FAR to help increase certainty and further streamline review.

Effect on Building Design

To understand the effects of the new FAR regulations on building design, staff consulted with ISD staff and the former members of the FAR Working Group. ISD staff confirmed that the current rules are working and understood by most design professionals now. The architects from the FAR working group expressed concern that the requirement to include third floor attic space could create a pressure for flatter-roofed homes. Though there is currently too little evidence to mark a trend, ISD staff shares this concern and suggests that they have seen a small tendency toward lower-pitched roofs driven in part by attempting to comply with FAR regulations. The architects noted that the real estate market is evolving, including a growing preference for two-story over three-story living, while still keeping steeply pitched roofs, which is creating a new constraint on home size.

The group agreed that further amendments to the FAR limits and the method of calculating gross floor area could be merited in the future. However, the group also agreed that more information should be collected before making any changes. The first new homes or additions permitted under the new FAR rules (by right or by special permit) have yet to be completed, making it hard to judge the true visual impact of the regulations.

Ultimately, there are limits to what FAR alone can accomplish in shaping design in residential neighborhoods. As a ratio of building size to lot size, FAR can only control neighborhood scale where lots are of similar sizes. As Attachment C illustrates, there are many areas of the City where roughly similar homes sit on lots of widely varying size. Furthermore, while there is one FAR limit for the SR2 zone, the SR2 zone encompasses widely differing neighborhoods (from Oak Hill Park to Waban), with differing lot sizes, grading, and architectural style. As the FAR Working Group Final Report from May, 2010 stated, “existing residential zoning districts are too blunt to account for the range of neighborhood character.”

RECOMMENDATION

The Planning Department believes that the new GFA calculations and FAR limits are working well and are now understood by the development community. It is difficult to judge the full effects of the regulations using only a single year of permit information, particularly when projects under the new FAR have not been completed. Therefore, the Planning Department recommends at least one more year of monitoring trends in residential development and design.

A comprehensive examination and revision of the regulations concerning residential neighborhoods will be a core part of Zoning Reform, Phase 2, including consideration of dimensional controls like setbacks and lot coverage, increasing the number and specificity of zoning districts to better correspond with neighborhoods, the potential for form-based design guidelines, and the special permit review process. The information collected over a continuing monitoring period would provide valuable information in helping shape future residential zoning regulations to achieve the City's many goals of preserving neighborhood character and permitting reasonable development.

The Planning Department recommends that no action is necessary on #49-11. Staff believes that collecting additional data to support a comprehensive approach to residential zoning as part of Zoning Reform Phase 2 would be more effective than attempting to amend the current FAR rules with the currently available data. Staff will develop metrics to monitor new residential development and renovation in preparation for Zoning Reform Phase 2, and provide updates as part of that process.

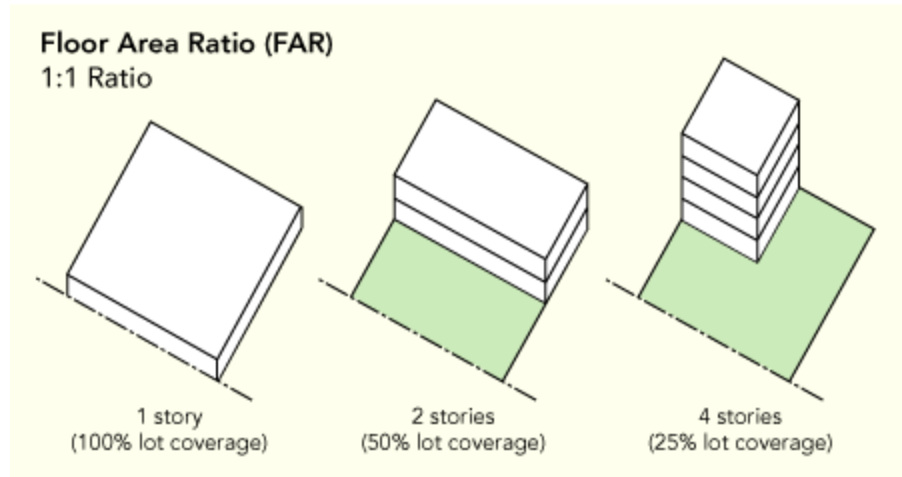
ATTACHMENT A: Background on FAR amendments and the FAR Working Group

ATTACHMENT B: Summary of fourteen zoning reviews performed for special permits applications between 10/15/11 and 10/15/12

ATTACHMENT C: Example area plan showing similarly sized homes on lots of widely differing areas

BACKGROUND

Floor area ratio (FAR) is the ratio of the gross floor area of all structures on a lot and the total lot area. The purpose of FAR is to measure and regulate the above-ground bulk or mass of structures. FAR is distinct from, but complementary to other dimensional controls such as setbacks, lot coverage, and maximum height.



The Goal of FAR Reform

The FAR Working Group stated that their goals were to:

- 1) Ensure a fairer application of FAR limits by more clearly defining what is included in the calculations of gross floor area and by eliminating exemptions to gross floor area; and
- 2) Ensure a fairer distribution of massing to ensure that smaller lots have some opportunities for minor expansions that would be compatible with the existing character within their neighborhoods.

History of the FAR Working Group³

FAR limits were added to the dimensional controls in residential zoning districts in Newton in 1997 as a response to concerns about the demolition of smaller homes and their replacement with larger-scale dwellings that many felt were out of character with their surroundings. At the time FAR was adopted, FAR limits were made applicable to new residential construction and to residential construction when over 50% of an existing house was demolished.

In the years after the adoption of residential FAR limits, many public officials and citizens raised concerns that Newton's FAR limits were easily and lawfully exceeded when homeowners and developers took advantage of the numerous exemptions from FAR limits found in the definition of gross floor area and in what was informally referred to as the "50% demo provision" to maximize their development potential. The latter provision (previously located in Sec. 30-15, Table 1, Footnote 7) was particularly problematic: as long as less than 50% of an existing home was demolished, there was no FAR limit on what could then be built on the site, other than limits imposed by other dimensional

³ Excerpted from the FAR Working Group Final Report; May 20, 2010

controls. Though intended to facilitate the creation of small additions, such as mudrooms or bathrooms, in practice it allowed very large expansions of existing homes, often to sizes that significantly exceeded FAR limits for new construction in the zoning district.

In March 2009, the Board passed Ordinance Z-44, which deleted Footnote 7, including the 50% demo provision, in its entirety, thereby making FAR limits applicable to all residential development, including expansions of existing dwellings. As a result of this change, completely new homes as well as renovations of or additions to existing homes both have to comply with FAR limits.

In the wake of the adoption of Z-44, a number of homeowners who were planning to make small additions using the 50% demo provision learned that they would be unable to proceed without a special permit because their homes either already exceeded FAR limits or would exceed them with their proposed additions. To aid homeowners in these situations, the Board then passed Ord. Z-51, which grants an FAR bonus of .05 to .07 for qualifying residential properties; this provision was extended till October 15, 2011. In June of 2009, the Board also passed a resolution requesting that the Director of Planning and Development conduct a study of residential FAR in Newton to advise on how the zoning ordinance might be amended with regard to FAR limits.

As a result of this resolution, the “FAR Working Group” was appointed in June 2009 with the goals of assessing existing FAR limits in residential neighborhoods of the City and making recommendations for amending the zoning ordinance to ensure that FAR regulations more accurately reflect current usage and ensure that new construction is in keeping with surrounding structures and the Newton Comprehensive Plan. Members of the Working Group were appointed by the President of the Board of Aldermen and the Mayor.

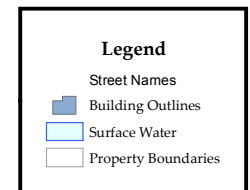
ATTACHMENT B: Special Permit Projects (Oct 15, 2011 to Oct 15, 2012)														
Date	Address	Zone	Waivers	Size of Lot (sq. ft.)	Allowed FAR	Bonus	Existing FAR	Proposed FAR	Existing (sq. ft.)	Size of Addition (sq. ft.)	Number of sq. ft. over allowed FAR	SP under old rule	SP under interim rule	Notes
Oct-11	56 Waldorf Road	MR1	FAR, ext NC	5,403	0.57	No	0.36	0.60	1,945	1,297	162.09	Yes	Yes	Large two-story addition on a small lot
Nov-11	14 Loring Street	SR2	FAR	8,500	0.40	No	0.48	0.54	4,080	510	1,190.00	Yes	Yes	Replace existing screaned porch with large home office on existing large house, modest lot
Nov-11	143 Lincoln Street	SR2	FAR, change NC	11,775	0.36	No	0.24	0.42	2,826	2,120	706.50	Yes	Yes	Doubling the size of a modest two-family to create two attached dwellings
Dec-11	39-41 Clarendon Street	MR1	FAR	11,130	0.50	Yes	0.55	0.58	6,122	334	890.40	No	Yes	Enclose existing poarches on a two large attached dwellings, built under the 50% demo rule in 2006
Dec-11	43 Hillside Avenue	SR2	FAR, ext NC	8,365	0.41	No	0.54	0.66	4,517	1,004	2,091.25	Yes	Yes	3.5-story addition to large victorian on a lot sloping to the rear
Jan-12	1841 Commonwealth Avenue	SR2	FAR, ext NC	8,475	0.40	No	0.34	0.48	2,882	1,187	678.00	Yes	Yes	Two-story addition and one car garage replacing existing two car garage
Mar-12	111 Pleasant Street	SR2	FAR, ext NC	5,628	0.45	No	0.72	0.76	4,052	225	1,744.68	Yes	Yes	Enclose rear porches on nonconforming two-family and structure on small lot
Mar-12	112 Exeter Street**	SR1	FAR, 3rd story	16,080	0.32	Yes	0.29	0.36	4,663	1,126	643.20	Yes	Yes	Submitted under pre-Oct 15 rules, large split level ranch looking for 3rd story addition
Mar-12	112-116 Dedham Stree #4 (new)	SR3	FAR, rear lot sub	15,033	0.24	No	n/a	0.36	n/a	5,412	1,803.96	Yes	Yes	Large home on rear lot subdivision with FAR waiver under Section 30-15, Table 4 for rear lots
Apr-12	150 Countryside Road (new)	SR1	FAR	25,000	0.26	No	n/a	0.28	n/a	7,000	500.00	No	No	Large new 2.5-story home with some exposed basement and enclosed porches
Apr-12	35 Norwood Avenue (new)	SR2	FAR	9,573	0.39	No	n/a	0.45	n/a	4,308	574.38	Yes	Yes	Large new 2.5 story home on modest lot with some exposed basement
Apr-12	258 Nevada Street	MR1	FAR, ext NC	11,122	0.48	No	0.31	0.57	3,448	2,892	1,000.98	Yes	Yes	Conversion of two-family to attached dwellings, new addition nearly doubling size of structure
Jun-12	97 Hillside Avenue	SR2	FAR	12,551	0.35	No	0.48	0.52	6,024	502	2,133.67	No	Yes	Demolition of existing garage, new attached garage on large 4-story victorian
Aug-12	54 Oxford Road	SR3	FAR	7,681	0.48	Yes	0.71	0.73	5,454	154	1,920.25	No	Yes	Large nonconforming house on modest lot making small addition

** Submitted under the pre-Oct 15 old FAR rules; needed a special permit either way, but smaller waiver required under old rules

Base Map

*City of Newton,
Massachusetts*

ATTACHMENT C



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: October 15, 2012

